

a*40-7
a*36-3

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.

WHEREAS, domestic abuse is a pervasive and threatening social and legal problem that requires aggressive and thorough intervention; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by changing the title of such part from "SPOUSAL ABUSE" to "DOMESTIC ABUSE."

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section to be appropriately designated:

Section____. The purpose of this part is to recognize the seriousness of domestic abuse as a crime and to assure that the law provides a victim of domestic abuse with enhanced protection from domestic abuse. A further purpose of this chapter is to recognize that in the past law enforcement agencies have treated domestic abuse crimes differently than crimes resulting in the same harm but occurring between strangers. Thus, the general assembly intends that the official response to domestic abuse shall stress enforcing the laws to protect the victim and prevent further harm to the victim and the official response shall communicate the attitude that violent behavior is not excused or tolerated.

SECTION 3. Tennessee Code Annotated, Section 36-3-601, is amended by deleting subsection (1) in its entirety, substituting instead the following and by relocating subsection (1) in its proper alphabetical order:

(1) "Domestic abuse" means inflicting or attempting to inflict physical injury on a family or household member by other than accidental means, physical restraint, placing a family or household member in fear of immediate physical injury, or causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress;

SECTION 4. Tennessee Code Annotated, Section 36-3-601, is amended by adding the following definitions in the appropriate alphabetical order:

() "Firearm" means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use;

() "Preferred response" means law enforcement officers shall arrest a person committing domestic abuse unless there is a clear and compelling reason not to arrest;

() "Victim" means a family or household member who is the subject of domestic abuse and who a law enforcement officer has determined is not a primary aggressor under the factors set out in Section 6(c) of this act;

() "Weapon" means a firearm or a device listed in Tennessee Code Annotated, Section 39-17-1302(a)(1)-(7);

SECTION 5. Tennessee Code Annotated, Section 36-3-606, is amended by deleting the language preceding the colon in subsection (a), by deleting subsection (a)(1) in its entirety, by substituting instead the following for the language deleted in subsection (a) and (a)(1), by adding the following new subparts to subsection (a) and by renumbering subsequent subparts accordingly:

(a) A protection order granted under this part to protect the petitioner from domestic abuse may include, but is not limited to:

(1) Directing the respondent to refrain from committing domestic abuse or threatening to commit domestic abuse against the petitioner;

(2) Prohibiting the respondent from telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

(3) Prohibiting the respondent from stalking the petitioner as defined in Tennessee Code Annotated, Section 39-17-315;

SECTION 6. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section to be appropriately designated:

Section ____.

(a) If a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor or felony, or if two (2) or more persons make complaints to the officer, the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor. If the officer believes that all parties are equally responsible, arrest is not the preferred response for any party, and the officer shall exercise his or her best judgment in determining whether to arrest any parties.

(c) To determine who is the primary aggressor, the officer shall consider:

(1) The history of domestic abuse between the parties;

(2) The relative severity of the injuries inflicted on each person;

(3) Evidence from the persons involved in the domestic abuse;

- (4) The likelihood of future injury to each person;
- (5) Whether one of the persons acted in self-defense; and
- (6) Evidence from witnesses of the domestic abuse.

(d) A law enforcement officer shall not:

(1) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel, or

(2) Base the decision of whether to arrest on:

(A) The consent or request of the victim; or

(B) The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.

(e) When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled. If a law enforcement officer decides not to make an arrest or decides to arrest two (2) or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two (2) or more parties.

(f) Every month, the officer's supervisor shall forward the compiled data on domestic abuse cases to the administrative director of the courts.

(g) When a law enforcement officer responds to a domestic abuse call, the officer shall:

(1) Offer to transport the victim to a place of safety such as a shelter or similar location or the residence of a friend or relative, unless it is impracticable for the officer to transport the victim, in

which case the officer shall offer to arrange for transportation as soon as practicable;

(2) Advise the victim of a shelter or other service in the community; and

(3) Give the victim notice of the legal rights available by giving the victim a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, you have the following rights:

1. You may file a criminal complaint with the district attorney general (D.A.).

2. You may request a protection order. A protection order may include the following:

(A) an order preventing the abuser from committing further domestic abuse against you,

(B) an order requiring the abuser to leave your household,

(C) an order preventing the abuser from harassing you or contacting you for any reason,

(D) an order giving you or the other parent custody of or visitation with your minor child or children,

(E) an order requiring the abuser to pay money to support you and the minor children if the abuser has a legal obligation to do so, and

(F) an order preventing the abuser from stalking you.

The area crisis line is _____

The following domestic abuse shelter/programs are available to you:

SECTION 7. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section to be appropriately designated:

Section____.

(a) If a law enforcement officer has probable cause to believe that domestic abuse occurred, the officer shall seize all weapons that are alleged to have been involved or threatened to be involved in the commission of a crime.

(b) The law enforcement officer shall give all seized weapons to the district attorney general. Also, the officer shall append an inventory of all seized weapons to the domestic abuse report that the officer files with the officer's supervisor pursuant to Section 6(e) of this act.

(c) The officer's supervisor shall include the appended information on seized weapons in the compilation of data that the officer's supervisor forwards to the administrative director of the court pursuant to Section 6(f) of this act.

SECTION 8. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section to be appropriately designated:

Section____.

(a) Within forty-five (45) days of the seizure, the district attorney general who has possession of a seized weapon may petition the judge of the court with jurisdiction over domestic abuse cases to:

(1) obtain title to the seized weapon:

(A) on a ground provided in Tennessee Code Annotated, Section 39-17-1316(a)(1) for denying the sale of the weapon to the owner, or

(B) on the grounds that the owner poses a threat of significant violence or immediate harm to the general public or a particular person or persons; or

(2) revoke the abuser's permit or license to use or possess the weapon pursuant to the law governing such use or possession.

In either situation, the district attorney general shall give notice of the petition to the owner of the weapon.

(b) If the district attorney general petitions the judge to obtain title to the weapon, then within thirty (30) days after the owner of the weapon receives notification of the petition, the owner may file with the judge a written claim requesting a hearing.

(c) If the district attorney general does not petition the court within forty-five (45) days, the district attorney general shall return the seized weapon to the owner.

(d) If the court grants title to the seized weapon, the court may order either that the weapon:

(1) Be used for legitimate law enforcement purposes, or

(2) Be sold pursuant to Tennessee Code Annotated, Section 39-17-1317(c)(1)-(3), except that the proceeds shall not go into the county or municipal general fund as stated in (c)(2). Rather, the proceeds shall go into the domestic violence community education fund established in Tennessee Code Annotated, Section 36-3-616.

SECTION 9. Tennessee Code Annotated, Title 36, Chapter 3, Part 6, is amended by adding the following new section to be appropriately designated :

Section____. The provisions of this act are declared to protect victims from domestic abuse and to provide remedies against the abuser. Thus, all provisions of this act shall be liberally construed to effectuate this act's purposes.

SECTION 10. Tennessee Code Annotated, Section 40-7-103, is amended by deleting subsection (a)(7)(A)-(D) in its entirety and by substituting instead the following:

(7) Pursuant to Section 6 of this act;

SECTION 11. If a provision of this act or the application of a provision to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application. To that end, the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect on July 1, 1995, the public welfare requiring it.

- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.
- AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3 and Title 40, Chapter 7, relative to domestic abuse.